the County of Sussex. Decree for complainants, and defendant appeals. Affirmed.

Thos. H. Howerton, of Waverly, and *Buford & Peterson,* of Lawrenceville, for appellant.

Geo. Bryan, of Richmond, and *Wm. B. Cocke,* of Stony Creek, for appellees.

STANDARD ICE CO., Inc. *v.* LYNCHBURG DIAMOND ICE FACTORY.

March 17, 1921.

[106 S. E. 390.

1. Sales (§ 71 (4)*)—Agreement to Deliver "Full Capacity of the Plant" Held to Have Reference to Daily Capacity.—A contract for the sale and purchase of ice, requiring plaintiff to furnish "the full capacity of the plant" when desired by defendant, held to require plaintiff only to furnish full capacity daily, and not to contemplate weekly capacity, and defendant could not demand on any one day any more than the capacity of the plant on that day.

2. Contracts (§ 155*)—Clause Construed against Party in Whose Favor It Was Inserted.—If there is a doubt as to the construction of a certain feature of a contract, it should be resolved against the party in whose favor it was inserted, since such language should be regarded as that of such party, but such rule should not be invoked where the language of the contract is clear.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 400.]

3. Contracts (§ 170 (1)*)—Sales (§ 71 (1)*)—Construction by Parties Persuasive; Seller Could Waive Strict Compliance with Contract without Losing Right to Invoke Subsequently.—Where ice company agreed to sell ice to defendant up to a certain amount on any particular day on notice, it did not lose the right to invoke a strict compliance with the contract, whenever it saw fit to do so at a later date, by reason of having delivered more ice than it was required to do when demanded by the defendant, although a course of dealing will place a practical construction on a contract in cases where the rights of the parties are doubtful.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 401.]

4. Contracts (§ 156*)—Ejusdem Generis Rule to Be Sparingly Applied.—The ejusdem generis rule is to be sparingly and cautiously applied.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 535.]

5. Contracts (§ 156*)—Statutes (§ 194*)—"Ejusdem Generis Rule" Defined.—The ejusdem generis rule, which applies alike to statutes

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and contracts, requires that where general words follow particular words the former are regarded to be applicable to the persons or things particularly mentioned, and the rule applies even if the general words are broad enough to cover other persons and things, unless something in the instrument plainly indicates that they are to be otherwise applied.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series Ejusdem Generis. For other cases, see 12 Va.-W. Va. Enc. Dig. 768.]

6. Sales (§ 85 (2)*)—Seller of Ice Not Relieved from Delivery by Sickness of Employees.—An ice company, agreeing to furnish ice demanded by defendant daily up to a certain amount, was not exempt from liability for failure to supply ice during a period of nine days in October, 1918, when it was unable to operate its plant because of sickness among its employees under a clause in the contract that, "In the event the plant * * * is partially disabled by breakdown, fire, high water, washout, or from any other causes whatsoever beyond its control, it shall not be required to furnish any ice," etc.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 36.]

7. Trial (§ 253 (10)*)—Instruction Not Objectionable as Ignoring Duty of Plaintiff Seller of Ice.—An instruction that if the jury believed that defendant failed to take a minimum of ice contracted for during certain months, then they should find for the plaintiff and assess damages at such a sum as it may have lost, etc., was not open to the objection that it was confined to the duty of the defendant to take, and ignores the duty of the plaintiff to furnish, the minimum quantity of ice provided for in the contract, as the jury could hardly have been unreasonable enough to find that defendant "failed to take a minimum," or any part thereof, which plaintiff was obligated to furnish but failed and refused to furnish.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714.]

8. Sales (§ 384 (7)*)—Instruction as to Damages for Failure to Take Ice Held Erroneous in View of Seller's Opportunity to Resell.—In an action involving damages for failure of defendant to take minimum quantity of ice provided under contract, an instruction that if defendant failed to take such minimum quantity, jury should assess damages at such sum as plaintiff "may have lost and have been damaged by reason of the failure to comply with said contract at $3.50 per ton," was erroneous, as it might be understood to mean that plaintiff's measure of damage for every ton of ice which defendant failed to take within the minimum amount was $3.50 per ton, when plaintiff was in fact selling ice to other persons and had ready sale for all of its ice.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 33.]

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Damages (§ 62 (4)*)—Party Must Minimize Damages Resulting from Breach of Contract.—Where a party is entitled to the benefit of a contract and can save himself from a loss arising from a breach of it at a trifling expense or with reasonable exertions, it is his duty to do it, and he can charge the delinquent with such damages only as with a reasonable endeavor and expense he could not prevent.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 183.]

Error to Corporation Court of Lynchburg.

Action by the Lynchburg Diamond Ice Factory against the Standard Ice Company, Incorporated. Judgment for plaintiff, and defendant brings error. Reversed.

Kemp & Barksdale, of Lynchburg, for plaintiff in error.

T. J. O'Brien, of Lynchburg, for defendant in error.

CAMP MFG. CO. *v.* GREEN et al.

March 17, 1921.

[106 S. E. 394.]

1. Partition (§ 44*)—Quieting Title (§ 29*)—Where Suit Is to Remove Cloud, and Not for Partition, Doctrine of Laches Is Not Strictly Applicable.—The general rule that laches does not apply to a partition suit by legal title holder within the statutory period, where no title has been acquired by adverse possession by the defendant or his predecessors is not applicable, where complainants' bill is not merely one for partition, where the parties' rights are clear, but shows adverse claims under deeds running through a period of 50 years, and alleges conveyances constituting a cloud on title, and prays that the rights of all parties be adjudicated.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 224, 225.]

2. Quieting Title (§ 1*)—Equitable Doctrine Should Control Disposition of Proceeding to Remove Cloud.—Where the only controversy in a case arises from deeds claimed void and the adverse claims thereunder, and the complainants seek relief by removal of cloud on title which only an equity court could give, equitable doctrines should control.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 512.]

3. Quieting Title (§ 29*)—Laches Applies to Settling Conflicting Titles from Danger of Losing Available Evidence.—Underlying reason for the doctrine of laches as applied to conflicting land titles, in removing clouds, is that because of lapse of time and the death of the parties it is impossible to ascertain all the facts, and therefore it is

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.